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No. 76-138

In the Supreme Court of the United States

OCTOBER TERM, 1976

NELLIE T. GOFF, PETITIONER

v.

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioner seeks review of the court of appeals' decision sustaining the refusal of the Secretary of the Department of Health, Education and Welfare to recognize a telephone call allegedly placed on her behalf in 1959 to a local Social Security office as an application for survivor's benefits under the Social Security Act.

1. Petitioner's first husband, Clayton E. Woolley, who was insured under both the Connecticut workmen's compensation statute (Conn. Gen. Stat. Ann. §5-144 (1969)) and the Social Security Act, 49 Stat. 622, as amended, 42 U.S.C. 401 *et seq.*, died on March 31, 1959, from injuries he suffered at work. Petitioner thereafter applied for and received workmen's compensation benefits.

On January 28, 1971, petitioner filed her first written application for survivor's benefits under the Social

Security Act for herself and the three children of her marriage to Woolley. On the basis of that application, the Secretary awarded surviving child's benefits to the two younger children still under 18 years of age, retroactive to January 1970.[1] However, the Secretary denied petitioner's claims for (1) accrued mother's benefits, (2) surviving child's benefits for her oldest child, and (3) additional retroactive benefits for her two younger children. The Secretary denied petitioner's claims to such additional benefits because petitioner had not applied in writing for those benefits prior to January 28, 1971 (Pet. App. 1b-2b).[2]

In support of her claims for additional benefits, petitioner had presented an affidavit prepared by the attorney who had represented her at the time of her first husband's death. Her former attorney stated in that affidavit that he had placed a telephone call in 1959 to the Social Security office in New Britain, Connecticut, and had been informed that neither petitioner nor her children were entitled to survivor's benefits under the Social Security Act because they were already receiving workmen's compensation (Pet. App. 1f-2f). Petitioner

[1]Under Section 202(j)(1) of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. 402(j)(1), a claimant is entitled to receive survivor's benefits retroactively for a period of up to twelve months preceding the filing of an application if the claimant would have been entitled to benefits had an application been filed during such period.

[2]Petitioner remarried in 1962, and her entitlement to surviving mother's benefits ceased at that time. 42 U.S.C. 402(g). Thus, during the twelve months preceding the filing of her application, she had not been eligible to receive such benefits. Similarly, petitioner's oldest child had married in 1969, and had not been eligible during 1970 to receive surviving child's benefits. 42 U.S.C. 402(d); Pet. App. 8c.

contended, in effect, that this telephone inquiry should have been regarded by the Secretary as the equivalent of a written inquiry.[3]

After having exhausted her administrative remedies, petitioner filed the present suit in the district court pursuant to 42 U.S.C. 405(g), seeking surviving mother's benefits for herself in a lump sum retroactive from 1962 (when she remarried) to 1959, and surviving child's benefits for her children in a lump sum retroactive from 1970 to 1959 for the two younger children and from 1969 to 1959 for the oldest. The district court rejected petitioner's claims, and granted the Secretary's motion for summary judgment, holding that petitioner's "[f]ailure * * * to file a timely application [under the governing regulations] is not simply a non-essential procedural requirement, [but] is a substantial and basic requirement of the regulations" (Pet. App. 5b). The court also held that the Secretary could not be estopped from denying petitioner's claims for additional benefits even if an employee of the Social Security Administration had given her former attorney incorrect information in 1959 (*id.* at 4b),[4] and that the Administrative Law Judge's recommendation that the Secretary award additional benefits was not binding upon the Secretary (*id.* at 5b). The court of appeals summarily affirmed (*id.* at 1a).

[3]Under the applicable regulations, a written inquiry concerning eligibility for survivor's benefits is sufficient to preserve a claimant's entitlement to such benefits, provided the claimant submits a written application for benefits, in the prescribed form, within six months of receipt from the Secretary of a notice informing the claimant of the need to submit a written application. 20 C.F.R. 404.613.

[4]Petitioner apparently has abandoned in this Court the estoppel arguments she advanced in the district court. In any event, the district court properly rejected those arguments (see Pet. App. 4b-5b).

2. The decision below is correct and further review is not warranted.

The Social Security Act provides that before a person may be paid social security benefits, including survivor's benefits, an application for benefits must be filed by or on behalf of such person. *E.g.*, 42 U.S.C. 402(d)(1)(A) and 402(g)(1)(D). The Act further provides that a retroactive award of benefits may not extend beyond the twelve months preceding the date of application. 42 U.S.C. 402(j)(1). The regulations issued by the Secretary pursuant to these statutory provisions expressly provide that a claim for benefits requires the filing of a written application.[5]

These requirements represent an entirely permissible exercise of the power of Congress and of the Secretary's power, under 42 U.S.C. 405(a),[6] to make such rules and regulations as are "necessary or appropriate"

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[5]Under the applicable regulations, "an individual has not 'filed an application' [for benefits, as required by the Social Security Act] * * * until an application on a form prescribed in [20 C.F.R.] 404.602 has been filed * * *." 20 C.F.R. 404.601(d). The term "to execute an application" is defined in 20 C.F.R. 601(e) to mean "the completion and signing of the application (or written statement, request, or notice." See also 20 C.F.R. 404.601(b) and (c).

[6]42 U.S.C. 405(a) provides as follows:

> *Rules and regulations; procedures.* The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

to administer the provisions of the Social Security Act providing for survivor's benefits. As the district court noted (Pet. App. 3b-4b):

> The Social Security Act, supplemented by its regulations, was intended to eliminate or at least reduce to a minimum the possibility of fraud, confusion, and laxity in its administration. The vastness of the program makes it essential to adhere to the written application procedure, if there is to be an orderly and controllable system of management for approving claims and paying out insurance benefits.

Cf. *Weinberger* v. *Salfi*, 422 U.S. 749, 784-785.

Contrary to petitioner's assertions (Pet. 5-7), the decision in this case does not conflict with the Fourth Circuit's decision in *Tuck* v. *Finch*, 430 F. 2d 1075. In *Tuck*, which concerned an application for disability benefits under Section 205(c)(5)(A) of the Social Security Act, as amended, 42 U.S.C. 405(c)(5)(A), the Court held that the claimant's oral inquiry concerning his entitlement to disability benefits tolled the applicable statute of limitations period governing the correction of work records. But as the court explained in *Tuck*, the claimant there was illiterate and "[w]hile a written application might be expected from a literate person, an illiterate often can do little other than make an oral request to the official to whom he has been referred" (430 F. 2d at 1077). Here, in contrast, the inquiry is alleged to have been made by petitioner's lawyer.

Moreover, the Secretary's records affirmatively established that the claimant in *Tuck* had made an oral inquiry concerning his entitlement to benefits (*ibid.*). Petitioner concedes (see Pet. App. 3b) that no written

record exists within the Social Security Administration to confirm that an oral inquiry was made on her behalf in 1959 concerning her own and her children's entitlement to survivor's benefits.[7]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1976.

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[7]Petitioner also raises in her petition, without elaboration, the question whether the Administrative Law Judge's recommendation that the Secretary award additional benefits was binding upon the Secretary (Pet. 1). The district court properly rejected this contention (Pet. App. 5b), after having noted its inconsistency with the Secretary's authority to make a final administrative determination of a claimant's eligibility for survivor's benefits (42 U.S.C. 405(b)) and with the right of judicial review provided by the Act (42 U.S.C. 405(g)).

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